

Application Report

Planning, Housing and Health
North Devon Council
Lynton House, Commercial Road,
Barnstaple, EX31 1DG



Application No:	78936
Application Type:	Variation of Condition(s)
Application Expiry:	20 August 2024
Extension of Time Expiry:	
Publicity Expiry:	9 August 2024
Parish/Ward:	WEST DOWN/MORTEHOE
Location:	Wind Turbine At Philip Dennis Foodservice Mullacott Cross Industrial Estate Ilfracombe Devon EX34 8PL
Proposal:	Variation of condition 3 (Timescale) attached to planning permission 52212 (Erection of one wind turbine (height 79.6 metres, height to hub 55.6 metres, blade diameter 48 metres) together with associated cabling works, erection of inverter house & creation of access track) to allow an extended timescale to 40 years for the continued use of the wind turbine
Agent:	Mr Kevin Davies
Applicant:	Philip Dennis Foodservice Limited
Planning Case Officer:	Ms T. Blackmore
Departure:	N
EIA Development:	
EIA Conclusion:	Development is outside the scope of the Regulations.
Decision Level/Reason for Report to Committee (If Applicable):	Committee – the agent is a District Councillor.

Site Description

The site is located to the rear of Philip Dennis Foodservices premises at Mullacott Cross Industrial Estate to the south of Ilfracombe.

There is a single wind turbine in place (approved under planning permission 52212) and this has been operational since the 26th April 2012.

The turbine measures 55.6 metres to hub, and 79.6 metres to blade tip with a rotor diameter of 48 metres.



Figure 1 – photograph of wind turbine in situ

Recommendation

Approved

Legal Agreement Required: No

Planning History

Reference Number	Proposal	Decision	Decision Date
75/0048/6 6/01	OUTLINE APPLICATION FOR PROPOSED INDUSTRIAL AND WAREHOUSE DEVELOPMENT at OS NOS 5123 & 5833, MULLACOTT CROSS, ILFRACOMBE, DEVON, EX34 8PL	WITHDRAWN	13 November 1975
76/0007/6 6/01	PROPOSED LAYING OUT OF ESTATE FOR INDUSTRIAL AND WAREHOUSE DEVELOPMENT WITHIN CLASSES III, IV, AND X at OS 3252, 2834, 2622, 5123, 5833, 7727, 500, 5092, MULLACOTT	FULL PLANNING APPROVAL	13 August 1976

Reference Number	Proposal	Decision	Decision Date
	CROSS, WEST DOWN, ILFRACOMBE, DEVON, EX34 8PL		
78/1030/6 6/05	PROPOSED NON-ILLUMINATED ADVERTISEMENT SIGN at MULLACOTT CROSS INDUSTRIAL ESTATE, , ILFRACOMBE, DEVON, EX34 8PL	FULL PLANNING APPROVAL	5 July 1978
13456	T & C P GEN REGS 1976 NOTIFICATION BY DCC IN RESPECT OF PROPOSED LAYING OUT OF ROADS & SEWERS AND CHANGE OF USE FROM AGRICULTURE TO USE CLASSES B1,B2 & B8 (AMENDED DESCRIPTION). at MULLACOTT CROSS INDUSTRIAL ESTATE, (LAND ADJ.), ILFRACOMBE, DEVON, EX34 8PL	FULL PLANNING APPROVAL	26 March 1991
14469	T & C P GEN REGS 1976 NOTIFICATION BY DEVON COUNTY COUNCIL OUTLINE APPLICATION PROPOSED EXTENSION TO EXISTING INDUSTRIAL ESTATE. at LAND ADJ, MULLACOTT CROSS INDUSTRIAL ESTATE, , WEST DOWN, ILFRACOMBE, DEVON, EX34 8PL	FULL PLANNING APPROVAL	15 October 1991
14470	T & C P GEN REGS 1976 NOTIFICATION BY DEVON COUNTY COUNCIL PROPOSED LAYING OF ROADS AND SEWERS TO SERVE PROPOSED EXTENSION TO EXISTING INDUSTRIAL ESTATE. at LAND ADJ, MULLACOTT CROSS INDUSTRIAL ESTATE, , WEST DOWN, ILFRACOMBE, EX34 8PL	FULL PLANNING APPROVAL	15 October 1991
20454	PROPOSED EXTENSION TO EXISTING CAR PARK at PHILIP DENNIS FROZEN FOODS, , MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, EX34 8PL	FULL PLANNING APPROVAL	28 June 1995
33501	EXTENSION TO EXISTING FACTORY at PHILIP DENNIS FROZEN FOODS LTD, MULLACOTT INDUSTRIAL ESTATE, ILFRACOMBE, EX348PL	FULL PLANNING APPROVAL	6 November 2002
35744	PART CONVERSION OF EXISTING LOADING & DISPATCH AREA & EXTENSION TO PROVIDE ADDITIONAL OFFICE & OTHER FACILITIES at MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, EX348PL	FULL PLANNING APPROVAL	15 September 2003

Reference Number	Proposal	Decision	Decision Date
37330	ERECTION OF TEMPORARY PORTAKABIN OFFICE ACCOMMODATION at PHILIP DENNIS FOOD SERVICE, MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, EX348PL	FULL PLANNING APPROVAL	12 May 2004
45762	ERECTION OF GARAGE at PHILIP DENNIS FROZEN FOODS LTD, MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, EX348PL	FULL PLANNING APPROVAL	28 February 2008
51451	ERECTION OF A 60M METEOROLOGY MAST AND ASSOCIATED GUY ROPES at PHILIP DENNIS FROZEN FOODS LTD, MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, DEVON, EX348PL	WITHDRAWN	6 January 2011
52212	ERECTION OF ONE WIND TURBINE (HEIGHT 79.6 METRES, HEIGHT TO HUB 55.6 METRES, BLADE DIAMETER 48 METRES) TOGETHER WITH ASSOCIATED CABLING WORKS, ERECTION OF INVERTER HOUSE & CREATION OF ACCESS TRACK at LAND AT MULLACOTT CROSS (PHILIP DENNIS FOODSERVICES LTD), MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, DEVON, EX348PL	FULL PLANNING APPROVAL	31 October 2011
53270	APPROVAL OF DETAILS IN RESPECT OF DISCHARGE OF CONDITIONS 5 (APPROVED PLANS), 6 (APPEARANCE & MATERIALS), 7 (ARCHAEOLOGY) & 9 (AVIATION WARNING LIGHTING) ATTACHED TO PLANNING PERMISSION 52212 at PHILIP DENNIS FROZEN FOODS LTD, MULLACOTT CROSS INDUSTRIAL ESTATE, ILFRACOMBE, DEVON, EX348PL	DISCHARGE OF CONDITION APPROVE	8 February 2012

Constraints/Planning Policy

Constraint / Local Plan Policy	Distance (Metres)
Advert Control Area Area of Special Advert Control	Within constraint
Chivenor Safeguard Zone Consultation Any Development	Within constraint
Landscape Character is: 5C Downland	Within constraint
USRN: 27504495 Road Class:R Ownership: Highway Authority/Private	11.09

Constraint / Local Plan Policy	Distance (Metres)
Within Adopted Employment Allocation:ILF04Mullacott Business Park	Within constraint
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
Within Braunton Burrows Zone of Influence	Within constraint
Within:, SSSI 5KM Buffer in North Devon,consider need for AQIA if proposal is for anaerobic digester without combustion plant	Within constraint
Within:Braunton Burrows, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
Within:Exmoor Heaths, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
SSSI Impact Risk Consultation Area	Within constraint
DM01 - Amenity Considerations DM02 - Environmental Protection DM04 - Design Principles DM05 - Highways DM08 - Biodiversity and Geodiversity DM08A - Landscape and Seascape Character ST01 - Principles of Sustainable Development ST02 - Mitigating Climate Change ST04 - Improving the Quality of Development ST07 - Spatial Development Strategy for Northern Devon's Rural Area ST14 - Enhancing Environmental Assets ST16 - Delivering Renewable Energy and Heat	

Consultees

Name	Comment
Arqiva Ltd Reply Received 17 th July 2024	Support
CIVIL AVIATION AUTHORITY Reply Received	No response received.
Councillor M Wilkinson Reply Received	No comments received.
DCC - Development Management Highways	No response received.

Name	Comment
Reply Received	
Environmental Health Manager	I have reviewed this variation application in relation to Environmental Protection matters.
Reply Received 30 July 2024	I have no objection to the proposed extended timescale.
National Air Traffic Services Reply Received 23 July 2024	The proposed development has been examined from a technical safeguarding aspect and does not conflict with our safeguarding criteria. Accordingly, NATS (En Route) Public Limited Company ("NERL") has no safeguarding objection to the proposal. However, please be aware that this response applies specifically to the above consultation and only reflects the position of NATS (that is responsible for the management of en route air traffic) based on the information supplied at the time of this application. This letter does not provide any indication of the position of any other party, whether they be an airport, airspace user or otherwise. It remains your responsibility to ensure that all the appropriate consultees are properly consulted. If any changes are proposed to the information supplied to NATS in regard to this application which become the basis of a revised, amended or further application for approval, then as a statutory consultee NERL requires that it be further consulted on any such changes prior to any planning permission or any consent being granted.
Natural England Reply Received	No response received.
Sustainability Officer Reply Received	No response received.
West Down Parish Council Reply Received 8 August 2024	West Down Parish Council recommend approval of this application.

Neighbours / Interested Parties

Comments	No Objection	Object	Petition	No. Signatures
0.00	0.00	0.00	0.00	0.00

No representations received.

Considerations

Proposal Description

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This application has been submitted under Section 73 of the Town and Country Planning Act 1990 and seeks the variation of condition 3 to extend the temporary planning permission referenced in condition 3 of planning permission 52212 (*Erection of one wind turbine (height 79.6 metres, height to hub 55.6 metres, blade diameter 48 metres) together with associated cabling works, erection of inverter house & creation of access track*) from 25 years from the from the date that electricity from the development is first provided to the company and/or brought into operation to 40 years from the date of connection (this being the 26th April 2012)

Condition 3

The permission is for a period not exceeding 40 years from the date that electricity from the development is first provided to the company and/or brought into operation (this being the 26th April 2012). No later than 3 months prior to the permanent cessation of electricity generation at the site, a scheme for the removal from the site of the turbine and associated works shall be submitted to the Local Planning Authority. Once approved in writing by the Local Planning Authority, restoration shall be completed in accordance with the approved scheme within 12 months of the restoration scheme being approved by the Local Planning Authority, or such other period as the Local Planning Authority may approve in writing.

Reason:

To secure removal of the development when no longer required, in the interests of visual amenity.

The rationale for the application is to secure a long term source of lower carbon energy for this local business, by extending the planning permission of this single wind turbine.

This application does not seek any physical changes to design, siting or scale of the previously approved wind turbine.

Planning Considerations Summary

The main planning considerations for this application are:

1. Principle of Development
2. Landscape and Visual Impacts
4. Residential Amenity
5. Ecology
6. Other Matters

Planning Considerations

In the determination of a planning application Section 38 of the Planning & Compulsory Purchase Act 2004 is relevant. It states that for the purpose of any determination to be made under the planning Acts, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan

for this area includes the Devon Waste Plan and North Devon and Torridge Local Plan. The relevant Policies are detailed above.

The National Planning Policy Framework (NPPF) is a material consideration.

1. Principle of Development:

The site is located in the countryside, therefore; Policy ST07 of the North Devon and Torridge Local Plan (NDTLP) must be applied. Policy ST07 restricts development in the countryside to be limited to that which is enabled to meet local economic and social needs, rural building reuse and development that is necessarily restricted to a countryside location.

Policy ST02: 'Mitigating Climate Change' of the NDTLP supports the proposal as it expects development to make a positive contribution towards the sustainability of northern Devon by (amongst other things), 'promoting opportunities for renewable and low-carbon energy generation whilst conserving and enhancing the natural and built environment (criteria d).'

Policy ST16: 'Delivering Renewable Energy and Heat' of the NDTLP provides the strategic development plan policy that is intended to determine the acceptability of the principle of development for renewable and low-carbon energy proposals across northern Devon. The policy is relevant but is not supportive for proposals for wind energy development.

The supporting text to Policy ST16 (paragraph 6.22) sets out the Council's approach to the consideration of proposals for wind energy development. The text states that '*The Council have not allocated sites for the development of wind turbines in this Local Plan, but it represents the policy framework against which planning applications will be considered, should they come forward as a result of a Neighbourhood Plan. The supporting text goes on to note that 'all proposals for new wind turbine development must be within a Neighbourhood Plan allocation and clearly demonstrate that any impacts in terms of noise, shadow flicker vibration, air traffic safety, radar and telecommunications have been mitigated adequately to comply with other policies within the Local Plan.'*

In this instance, the application seeks to extend the operational life of an existing wind turbine from 25 years to 40 years (another 15 years) from the point of first generation, this being the 26th April 2012. Although the lifetime was originally set for 25 years, if properly maintained turbines can operate beyond their original design life and contribute to the meeting of targets and supply of renewable energy without the requirement for re-powering.

There are no additional construction works proposed as the life extension can make use of all existing infrastructure. The wind turbine has been brought into use and renewable energy is being exported to the national grid. Electricity was first generated from the wind turbine on the 26th April 2012, as such its impacts of the development are fully realised.

Although it is accepted, there is not policy support (within the North Devon & Torridge Local Plan) for a new wind turbine, as this is an existing wind turbine which is operating currently, the principle of extending the lifetime of this wind turbine is considered to be acceptable.

2. Landscape and Visual Impacts:

Policies ST04 (improving the quality of development) and DM04 (design considerations) of the NDTLP, requires new developments to be of high quality design, including being well

related to their surroundings, be of an appropriate scale, include quality materials, and to be sympathetic to the character and appearance of the local area.

Policy DM08A of the NDTLP, states that developments should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes. Development must take into account and respect the sensitivity and capacity for the landscape asset, considering cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed.
Impacts on heritage assets.

The impact upon the landscape was assessed as part of the original application. It was concluded that the benefits amounting from the proposals in terms of renewable energy generation and it was considered that on balance the benefits of the proposal in terms of its positive contributions to renewable energy development outweigh the level of harm resulting to landscape character of both designated and undesignated landscapes. It was acknowledged that it does not mean that no significant local level effect would occur or that the landscape would remain unchanged but those matters must be balanced against other aspects of the scheme.

In the overall conclusion of the Landscape and Visual Impact Assessment of the original application, it was considered that there would be no significant landscape impact on:

- The surrounding landscape character, due to the scale of the proposals in the open landscape setting
- The north Devon Area of AONB or the Heritage Coast, as topography and woodland cover reduce available views of the proposal.

There would be significant impacts on the Coastal Protection Area, which is 0.3 km from the site, and seen in the context of Mullacott Cross Industrial Estate.

There would be moderately significant impacts on Exmoor and North Devon High Coast County Landscape Character Area and the Downland Landscape Character Type (5C) as a result of the sensitivity of the character area. Impacts will be limited to the local area.

It was considered that on balance the benefits of the proposal in terms of its positive contribution to renewable energy outweigh the level of harm resulting to landscape character.

3. Residential Amenity:

Policy DM01 of the NDTLP relates to amenity considerations and notes, development will be supported where:

- a) It would not significantly harm the amenities of any neighbouring occupiers or uses; and
- b) The intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.

One of the core principles of the NPPF is to secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings.

The impact upon residential amenity was assessed as part of the original application. It was concluded that the wind turbine is situated an adequate distance from neighbouring dwellings not to have an overbearing impact on the occupants therefore not resulting in any adverse visual amenity impacts directly on the nearest neighbouring property.

The Environmental Protection Officer was consulted on the previous planning application and confirmed that at the proposal would not exceed 35 dbA, with the imposition of the safeguarding noise conditions the proposal would meet the requirement of local plan policies on amenity.

The Environmental Protection Officer has been consulted on this variation of condition application and confirmed that, the wind turbine operates with an existing noise limit restriction and furthermore, the Environmental Protection Team has no records of noise complaint. Subsequently, the Environmental Protection Team has no objections.

A noise limit restriction condition has been re added to this recommendation. The proposal is considered to be in accordance with Policy DM01 of the North Devon & Torridge Local Plan.

5. Ecology

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Habitat Regulations 2019).

This is further reinforced within the NDTLP through Policies DM08 and ST14 which state that development proposals should conserve and, where possible, enhance biodiversity interests.

The turbine is already existing and in use. The continued use of the turbine is not expected to result in any additional impacts upon ecology, beyond that which was considered during the 'original' application.

6. Other Matters

As this application is for a variation of condition 3 (now condition 2) the other planning conditions have been re-applied to this permission.

Conclusion

The application is considered to accord with the adopted development plan. Approval of the application is therefore recommended subject to the imposition of planning conditions.

Human Rights Act 1998

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

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- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

Recommendation

Approved

Legal Agreement Required: No

Conditions

1. The development hereby approved shall be personal to Phillip Dennis Food Services Company only, (together with any mortgagee or charge taking possession of the site) and on cessation of their occupancy of the site will be removed entirely.

Reason:

The Local Planning Authority have considered the personal needs of the applicant to outweigh the visual harm to the landscape, which might not be so demonstrable with other potential users of the site.

2. The permission is for a period not exceeding 40 years from the date that electricity from the development is first provided to the company and/or brought into operation (this being the 26th April 2012). No later than 3 months prior to the permanent cessation of electricity generation at the site, a scheme for the removal from the site of the turbine and associated works shall be submitted to the Local Planning Authority. Once approved in writing by the Local Planning Authority, restoration shall be completed in accordance with the approved scheme within 12 months of the restoration scheme being approved by the Local Planning Authority, or such other period as the Local Planning Authority may approve in writing.

Reason:

To secure removal of the development when no longer required, in the interests of visual amenity.

3. In the event that the turbine hereby permitted fails to produce electricity for supply to the company electricity grid for a continuous period of 12 months unless that turbine is under repair then:

(i) the operator of the development shall notify the Local Planning Authority in writing no later than one month after the end of that 12 month period;

(ii) the wind turbine and its associated ancillary equipment shall be removed from the site no later than 9 months from the end of that 12 month period unless otherwise approved in writing by the Local Planning Authority;

If the wind turbine is removed in accordance with clause (ii) above the land associated with the turbine shall be restored in accordance with a scheme to be submitted to the Local Planning Authority no later than 2 months prior to the end of the 12 month period. Such scheme to be approved in writing by the Local Planning Authority and to include the management and timing of the works and a traffic management plan. Restoration shall take place in accordance with the approved scheme.

Reason:

To secure removal of the development when no longer producing electricity, in the interests of visual amenity.

4. The development shall be carried out in accordance with drawing no. 1116/2370, 1116/2371, 1116/2372, 1116/2374 and 1116/2380 received 24 May 2011, and the relevant details in the Design and Access Statement received 11 August 2011.

Reason:

To clarify the terms of the consent and to ensure the development accords with submitted plans.

5. Unless the development is carried out in accordance with discharge of condition application 53270 no development shall take place until the external appearance and external materials to be used in consultation of the wind turbine, the transformer and sub-station shown on drawing no. 1116/2371 have been submitted to and approved in writing by the Local Planning Authority. These agreed details shall then be implemented in full.

Reason:

To clarify the terms of the consent and in the interests of visual amenity.

6. Unless the development is carried out in accordance with discharge of condition application 53270 no development shall take place until there has been secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details.

Reason:

To ensure that an appropriate record is made of archaeological evidence that may be affected by the development.

7. Within 28 days of the commissioning of the approved development the applicant shall provide written confirmation of the Ministry of Defence and NATS of the date of completion of construction, the height above ground level or the highest potential obstacle and the position in latitude of the turbine.

Reason:

To ensure no interference with air traffic.

8. Unless the development is carried out in accordance with discharge of condition application 53270 no development shall take place until a scheme of aviation obstruction lighting has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme at the same time as the turbine is first erected and mentioned permanently thereafter.

Reason:

To ensure air traffic safety in the vicinity of the development.

9. Noise from the turbine shall not exceed 35db LA 90 10 min (when measured no closer than 3.5 metres from the facade of the dwelling) at any wind speed up to 10 m/s at 10 m height and when measured at the curtilage of the any dwelling (excluding that in the ownership or control of the applicant) extant at the time that planning permission was granted.

Reason:

To protect the amenity of nearby residents and occupiers of the industrial estate.

Informatives

1. Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission. This has included consideration of the planning history of this site.